

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 09-CV-10463

FOUR HUNDRED SEVENTY SEVEN (477)
FIREARMS,

Defendants.

**ORDER DISMISSING CLAIM OF GEOFFREY KISH
AND
SETTING DEADLINE FOR FURTHER ACTION ON CLAIM OF BETTY SUMMERS**

On October 28, 2009, Plaintiff United States of America (the “Government”) filed a motion to compel the depositions of Claimants Geoffrey Kish and Betty Summers. The court held a telephone conference on the record on October 29, 2009.¹ Phillip Ross was present on behalf of the Government, and Cynthia Heenan was present on behalf of all claimants, except Claimant Terrot Myles.

At the telephone conference, Ms. Heenan notified the court that she had obtained permission to stipulate to the dismissal of Geoffrey Kish’s claim. Based on counsel’s representation on the record, the court will dismiss Geoffrey Kish’s claim.

¹At the telephone conference, counsel for the parties also discussed the Government’s pending “Motion to Dismiss Claimants’ Counter-Complaint.” Ms. Heenan indicated that she agreed with the Government’s argument in its motion that the counterclaim was not proper in the civil forfeiture case and that the parties are planning to stipulate to a dismissal of the counterclaim. On November 2, 2009, the parties stipulated to the dismissal of the claimants’ counterclaims and the Government’s motion to dismiss. Pursuant to the stipulation, the court entered an order dismissing the counterclaims and the Government’s motion.

Regarding Claimant Betty Summers, Ms. Heenan stated that she has been unable to maintain contact with her client. The court informed Ms. Heenan that she is to make additional efforts to contact Claimant Betty Summers and notify the Government by **November 6, 2009, at 12:00 p.m.**, of the result, specifically whether Betty Summers intends to remain as a claimant in this case. If Ms. Heenan reports that Betty Summers intends to remain a claimant, she must be made available for deposition reasonably soon and the Government is directed to so notify the court; the court will forestall further action in this regard. If Ms. Heenan reports to the Government that Betty Summers either remains unaccessible or that she does not intend to remain a claimant, the court expects to hear that report from Ms. Heenan as well, on or before the same date, **November 6, 2009**, and the court will then dismiss her claim. In addition or as an alternative, in light of the history of the case and the discussion and directions given on the record, in the event that the court hears nothing at all from either Ms. Heenan or the Government before **November 6, 2009**, the court will interpret that silence as a clear indication that Ms. Heenan has been unsuccessful in contacting Betty Summers, and the court will *sua sponte* dismiss the Summers claim for failure to prosecute.

Accordingly,

IT IS ORDERED that Geoffrey Kish's Claim [Dkt. # 21] is DISMISSED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: November 5, 2009

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, November 5, 2009, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522
